

# **Fiscal Services Division**

## **Legislative Services Agency**

### **Fiscal Note**

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HF 2686 – Identity Theft, Employers (LSB 6463 HZ)

Analyst: Ron Robinson (Phone: (515) 281-6256) ([ron.robinson@legis.state.ia.us](mailto:ron.robinson@legis.state.ia.us))

Fiscal Note Version – New

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#### **Description**

House File 2686 requires the Administrator of the Investigations Division of the Department of Inspections and Appeals (DIA) to establish rules for investigations into identity theft for the purpose of employment. The Administrator is granted jurisdiction for investigation and enforcement. This Bill establishes the crime of identity theft for the benefit of gaining employment as a Class D felony and requires employers to verify the identity of each new employee by examining specified identification for facial validity within 10 days after hiring. The crime of identity theft is amended to include the elements of attempting to fraudulently use the identification information of a fictitious person to contract for various benefits, including obtaining employment. Nonresidents will now be permitted to obtain an Iowa non-operator identification card.

The Bill creates Chapter 91G, Code of Iowa, relating to the classification of individuals as employees or independent contractors. The Labor Commissioner of the Iowa Department of Workforce Development (IWD) is required to investigate alleged violations, enforce the provision of the new Chapter, and requires the Department to file an annual report. The Bill establishes civil penalties and specifies actions that are to be considered either simple, serious, or aggravated misdemeanors.

The Bill also provides bail restrictions for unauthorized aliens. The Bill specifies that this change is exempt from the State mandate statute.

The Bill takes effect January 1, 2009.

#### **Background**

Federal Immigration and Customs Enforcement (ICE) officials have indicated that when foreign-born nationals (persons born outside the United States) are arrested, they are often allowed to post bail and are released from county jails before their citizenship status can be verified. The ICE officials have requested that local law enforcement provide notification when foreign-born nationals are booked into a county jail. This will allow ICE agents the opportunity to interview these persons and determine if they are in the United States illegally. If ICE determines the person is an unauthorized alien, a federal detainer (48-hour hold) could be filed to allow for deportation. Once the 48-hour detainer expires, release could occur.

As a point of information, persons convicted of a crime are required to complete the required sentence prior to deportation. Typically, in criminal situations, the ICE officials file a federal detainer that stays on file with the Department of Corrections and is activated upon sentence completion. As of January 30, 2008, there were 154 foreign-born nationals serving criminal sentences in the Iowa Department of Corrections.

#### **Assumptions**

- The average State cost for one Class D felony conviction ranges from \$5,100 (court costs, indigent defense, and probation) to \$11,400 (court costs with a jury, indigent defense, prison, and parole). Costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.

- The average State cost for one aggravated misdemeanor ranges from \$2,200 (court costs and probation) to \$6,800 (court costs with a jury, prison, parole, and indigent defense). Costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.
- The average State cost for one serious misdemeanor conviction ranges from \$120 (court costs) to \$5,600 (court costs including a jury, indigent defense, and prison). The maximum costs will be incurred across multiple fiscal years while the offender is supervised in the correctional system, either in prison or the community.
- The average State cost for one simple misdemeanor conviction ranges from \$20 (court costs) to \$320 (court costs and indigent defense).
- Each DIA investigator will be involved in 20 cases per month.
- Tax and benefit rates will be similar to established construction firms.
- There will be 10,000 additional construction workers covered under unemployment insurance.
- Foreign-born nationals bond out of jail before they are interviewed by ICE agents.
- Undocumented immigrants comprise more than one nationality or ethnicity.
- Undocumented immigrants will be arrested at the same rate as the general population.
- For most criminal proceedings, there is a six-month average time span between arrest and conviction/acquittal.
- Denying bail to all arrested persons with temporary papers, visas, work permits, etc. would increase the number of jail bed days a person would be held by a county jail.
- Racial profiling could occur, increasing the possibility of liability claims against counties.
- Denying bail to individuals with legal status while checking documents could increase the possibility of liability claims against counties.
- According to Pew Charitable Trusts, the 2005 arrest rate in Iowa was 1,697 per 100,000.
- The marginal cost per inmate, per day in a county jail is \$15.

### **Correctional Impact**

House File 2686 creates a new Class D felony for falsifying employment identity verification documentation and adds use of a false, or fictitious, identity for employment purposes to identity theft definitions. Identity theft penalties range from an aggravated misdemeanor to a Class D felony based on the value assigned to the stolen items. The Bill also specifies actions that are to be considered either simple, serious, or aggravated misdemeanors. Since the changes are not closely related to existing offenses, the correctional impact of these new offenses can not be determined.

The correctional impact of the bail restrictions provision cannot be determined; however, there is potential for increased cost at county jails. For example, if 1,200 foreign-born nationals are arrested and spend an additional 2 days in a county jail at a marginal rate of \$15 per day, the additional cost to county jails would be \$36,000 annually.

### **Fiscal Impact**

Sufficient data is not available to provide an estimate on any changes in the payment of withholding taxes, the payment of penalties, or the increase in license registration fees that would be brought about by HF 2686.

The Iowa Department of Transportation will incur an estimated one-time Road Use Tax Fund expense of \$90,000 during FY 2009 for programming and system changes to issue non-operator identification cards to individuals that are not Iowa residents.

The DIA expenses for administering the rules pertaining to identity theft for the purpose of employment will increase by an estimated \$411,000 and 3.0 FTE positions for FY 2009 and \$480,000 annually for FY 2010 and subsequent years.

The IWD expenses for administering the rules pertaining to an individual's employment status will increase General Fund expenses by an estimated \$715,000 and 7.0 FTE positions for FY 2009 and \$640,000 and 7.0 FTE positions annually for FY 2010 and subsequent years.

The addition of an estimated 10,000 workers to the unemployment insurance system will decrease the Unemployment Insurance Trust Fund balance by an estimated \$200,000 for FY 2009 and \$400,000 for FY 2010 and subsequent years for the increase in Trust Fund revenue and the increase in the payment of benefits. The additional expenses for the IWD for the increased unemployment insurance workload will be an estimated \$281,000 and 4.0 FTE positions for FY 2009 and \$266,000 and 4.0 FTE positions annually for FY 2010 and subsequent years. The increased staff costs will be paid from the General Fund.

In addition to the potential cost to county jails, there would be a potential increased cost to the federal government for staff time and travel expenses if ICE officials perform more interviews.

**The tables below summarize the General Fund and non General Fund fiscal impact of HF 2686:**

<b>Estimated General Fund Impact of HF 2686</b>			
	<u>FY 2009</u>	<u>FY 2010</u>	<u>FTE</u>
DIA Expenses for Administering Rules	\$ 411,000	\$ 480,000	3.00
IWD Expenses for Administering Rules	715,000	640,000	7.00
IWD - Unemployment Workload Incr	281,000	266,000	4.00
Total Cost	<u>\$1,407,000</u>	<u>\$ 1,386,000</u>	<u>14.00</u>

<b>Estimated Non-General Fund Impact of HF 2686</b>		
	<u>FY 2009</u>	<u>FY 2010</u>
DOT - Road Use Tax Fund	\$ 90,000	
Decr. Unemployment Trust Fund Bal and payment of benefits	200,000	400,000

### **Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division (CJJP)  
Department of Inspections and Appeals  
Iowa Department of Workforce Development  
Iowa Department of Transportation  
Department of Revenue  
Iowa State Sheriffs and Deputies Association  
PEW Charitable Trusts  
Immigration and Customs Enforcement, Federal Government

/s/ Holly M. Lyons

April 16, 2008

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The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

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